

-PS-

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DAVID R. MCGEE, 04-B-2354,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

ORDER
06-CV-0037A(F)

Plaintiff has moved to have counsel appointed to represent him in this social security appeal (Docket No. 8). For the reasons stated below the motion is denied without prejudice to renewal.

The factors to be considered in ruling on a motion for the appointment of counsel include "the merits of plaintiff's case, the plaintiff's ability to pay for private counsel, [plaintiff's] efforts to obtain a lawyer, the availability of counsel, and the plaintiff's ability to gather the facts and deal with the issues if unassisted by counsel." *Cooper v. A. Sargenti Co.*, 877 F.2d 170, 172 (2d Cir. 1989).

The Court must consider the issue of appointment carefully, of course, because "every assignment of a volunteer lawyer to an undeserving client deprives society of a volunteer lawyer available for a deserving cause." *Cooper*, 877 F.2d at 172. Therefore, the Court must first look to the "likelihood of merit" of the underlying dispute, *Cooper*, 877 F.2d at 174, and "even though a claim may not be characterized as frivolous, counsel should not be appointed in a case where the merits of the . . . claim are thin and his chances of prevailing are therefore poor." *Carmona v. United States Bureau of Prisons*,

243 F.3d 629, 632 (2d Cir. 2001) (denying counsel on appeal where petitioner's appeal was not frivolous but nevertheless appeared to have little merit).

Plaintiff seeks counsel but there is an inadequate showing that the appointment of counsel is warranted in this matter. Plaintiff has demonstrated initially an ability to present his claims to the Court and deal with the issues presented. He has also not demonstrated that he has made an effort to obtain counsel on his own. Moreover, the Court has been provided a copy of the administrative record (transcript of proceeding before Social Security Administration) and accordingly the issues presented are ones which can be addressed and reviewed by means of said record. Accordingly, plaintiff's request for the appointment of counsel is denied at this time.

Further, in order to assist plaintiff in pursuing his case *pro se*, the Clerk of the Court is directed to send plaintiff a copy of the Court's booklet entitled Pro Se Litigation Guidelines.

SO ORDERED.

/s/ Leslie G. Foschio

LESLIE G. FOSCHIO
UNITED STATES MAGISTRATE JUDGE

Dated: June 20, 2006
Buffalo, New York